IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1921 OF 2005

M/s. Choudhary International
Pvt. Ltd. & Anr ...Petitioners

Versus

Union of India & Ors ...Respondents

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Mr. Naresh Kaushik with Mr. Yogesh Rohira, Advocate for Petitioners

Mr. H.V. Mehta with Mr. M.M. Goswami, Advocate for Respondent Nos. 1 and 2.

Mr. S.R. Shinde, A.P.P. for State.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 11TH AUGUST, 2005

P. C.:-

1. Heard the learned advocate for the petitioners, the learned advocate for the respondent Nos. 1 and 2 and the learned A.P.P. for the State.

2. The petitioners have filed this petition for quashing of complaint i.e. Case No. 113/S/1997 filed against them by the Union of India. The said complaint has been filed before the learned Chief Metropolitan Magistrate, Esplanade, Mumbai. The said complaint is in respect of alleged violation of provisions of Customs Act, 1962. Adjudication

proceedings were also initiated against the petitioners by the respondent No.2. In respect of the adjudication proceedings Order F. No. VIII(b)10(33) Cus./91 dated 30.04.1991 and Order F.No. VIII(b)10(33) Cus./92 dated 23.12.1992 came to be passed.

3. It is an admitted position that the petitioner preferred an appeal before the CEGAT Tribunal in respect of the orders passed in adjudication proceedings. The petitioner succeeded before the Customs Excise and Gold (Control) Appellate Tribunal (CEGAT). Copy of the order is annexed at Exh.B. It is submitted that in view of this order, the complainant is liable to be quashed. The learned counsel appearing on behalf of the Union of India has submitted that in such an event this court can exercise its inherent powers and quash the complaint. My attention is drawn to the decision in the case of **Richman Silks Ltd. Vs. Assistant Commissioner (Legal), Customs & Central Excise, Hyderabad reported in 2004 (182) E.L.T. 318 (A.P.)** wherein the view has been taken that if the adjudication proceedings are set aside, then the complaint is also liable to be quashed. Similar view has been taken by this Court in the case of **Mohan Shet Vs. Union of India and Ors. in Criminal Writ Petition No. 442 of 2005 decided on 16.3.2005.** Thus, in view of the order of

CEGAT, the complaint No. 113/S/1997 pending before the Chief Metropolitan Magistrate, Esplanade, Mumbai is quashed and set aside.

4. Mr. Mehta, the learned advocate for the Union of India states that the Customs authorities are initiating de-novo adjudication proceedings in respect of the present two cases. It would be open to the Customs Authority to file fresh prosecution depending upon the order of adjudication in the said two cases.

5. Writ petition is disposed of in the above terms.

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